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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,904	10/08/2003	Todd H. Huffman	CB 03-1	6337

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EXAMINER

ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/680,904	Applicant(s) HUFFMAN ET AL.	
	Examiner Gary E. Elkins	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-32 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 16-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 20031008.
- 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the substrate weakened region in the vicinity of the skived side seam as set forth in claim 30 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: no description can be found of the embodiment where the weakened

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region is in the vicinity of the skived side seam as set forth in claim 30. The embodiment shown in the drawings and described in the specification shows the weakened region on the opposite side of the container from the skived side seam 35.

Claim Objections

3. Claim 17 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 17 is dependent upon cancelled claim 1. It is assumed for the purpose of applying the prior art that claim 16 was the intended dependency. However, correction is required.

Claim Rejections - 35 USC § 112

4. Claims 19, 20, 23-27, 29 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preamble in each of claims 19, 20, 26 and 27 is indefinite. Each of claims 19, 20, 26 and 27 is a dependent claim and, by definition, must include all the limitations of the claim(s) they depend from. However, the preamble is indicating that only the fitment of the previous claim is being included within the dependent claim. As a result, the claims are unclear with respect to what is being claimed. For the purpose of applying the prior art, it is assumed that these claims are claiming the container as set forth in the previous claim(s) as opposed to merely the fitment. However, correction is required.

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The following each lack antecedent basis in the claims: claim 26, "the frame and lid", claim 27, "said frame perimeter", "said lid perimeters", "said lid" (two occurrences) and "said frame" (two occurrences), claim 29, "said lid" and claim 30, "the skived side seamed".

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 16-20, 22-25, 31 and 32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 6 and 7 of U.S. Patent No. 6,688,515. Although the conflicting claims are not identical, they are not patentably distinct from each other. Claims 16-20, 22-25, 31 and 32 of the application are narrower than claims 1-3, 6 and 7 of the patent in that the container set forth is indicated as formed from a blank as defined in claim 16. Official notice is taken that containers formed from a substrate material with a barrier layer including fin seals and further including a weakened area within the substrate material for opening the container are commonly made from a blank of material which is subsequently folded up to form the container. It would have been obvious to make the container as set forth in claims 1-3, 6 and 7 of the patent from a blank of material. All other elements of the application claims are found in claims 1-3, 6 and 7 of the patent. Other than formation from

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a blank, the difference between the application claims and the patent claims lies in the fact that the patent claims include more limitations and is thus more specific. The invention in the patent claims are in effect a species of the generic invention in the application claims. It has been held that the generic invention is anticipated by the species. See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since each of the application claims is anticipated by the patent claims, respectively, they are not patentably distinct therefrom.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

8. Claims 16, 31 and 32 are rejected under 35 U.S.C. 102(a) as being anticipated by Robichaud '470. Robichaud '470 discloses a container blank including a weakened area which does not extend through a barrier layer on the inside of a substrate. The weakened area in Robichaud '470 is considered to be of a dimension such that it could align with a fitment insofar as claimed.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. Claims 16-18, 22, 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robichaud et al '999 in view of Robichaud '470. Robichaud et al '999 discloses a container formed by a substrate layer and an inner barrier layer. The container includes a weakened area at a top corner of the container which does not extend through the barrier layer and a fitment applied over the weakened area. The fitment includes beveled areas 92, 132 which form a close fit, i.e. they are close when the lid and frame are in the closed position. Robichaud et al '999 does not disclose forming the container from a blank. Robichaud et al '470 teaches that it is known to make a sealed package folded up from a blank. It would have been obvious to make the container of Robichaud et al '999 from a flat blank as taught by Robichaud '470 as the necessary manner of forming a package with the type of seams shown in Robichaud et al '999.

11. Claim 21 and claim 30, as best understood in view of paragraphs 1 and 2 above, are rejected under 35 U.S.C. 103(a) as being unpatentable over Robichaud et al '999 in view of Robichaud '470 as set forth in paragraph 10 above, in view of either Farber or Schadowski et al. Modified Robichaud et al '999 evidences all structure of the claimed container except a skived side seam. Each of Farber and Schadowski et al teaches that it is known to provide a skived side seam in a sealed package to enhance the ability of the container to preserve the contents. It would have been obvious to make the container in Robichaud et al '999 with a skived side seam as taught by either Farber or Schadowski et al to enhance the ability of the container to preserve the contents.

Conclusion

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be

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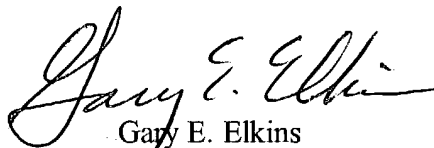
used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

If in receiving this Office Action, it is apparent that certain documents are missing, e.g. copies of references cited, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703)306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703)308-1078.

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (703)308-1034. The Examiner can normally be reached Monday, Tuesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (703)308-2572.


Gary E. Elkins
Primary Examiner
Art Unit 3727

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26 June 2004